

3/27/18

1:58 P.M.

Chapter No. 423  
18/SS26/R639SG  
AR / LR TB

## ***SENATE BILL NO. 2668***

Originated in Senate

Liz Welch

Secretary

SENATE BILL NO. 2668

AN ACT TO CREATE NEW SECTION 81-5-64, MISSISSIPPI CODE OF 1972, TO PROVIDE THE ORDER OF PRIORITY BY WHICH A FINANCIAL INSTITUTION MUST GRANT ACCESS TO A SAFE-DEPOSIT BOX UPON THE DEATH OF THE LESSEE; TO PROVIDE THAT A PERSON SEEKING ACCESS TO A SAFE-DEPOSIT BOX MUST PROVIDE TO A FINANCIAL INSTITUTION CERTAIN DOCUMENTATION; TO PROVIDE LIABILITY PROTECTIONS TO FINANCIAL INSTITUTIONS IN CERTAIN INSTANCES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** The following shall be codified as Section 81-5-64, Mississippi Code of 1972:

81-5-64. (1) **Definitions.** For purposes of this section, the following terms shall have the following meanings:

(a) "Financial institution" means any banking corporation, national bank, savings and loan association, credit union or postal savings bank operating in this state.

(b) "Safe-deposit box" means a storage container maintained in the vault area of a financial institution leased to a financial institution customer for the safekeeping of personal property that can be accessed with keys, pin numbers or some other security device.

(c) "Successor" means the decedent's spouse; or if there is no surviving spouse of the decedent, then any adult child of the decedent; or if there is no surviving spouse or adult child of the decedent, then either parent of the decedent; or, if there is no surviving spouse, adult child or parent of the decedent, then any adult sibling of the decedent.

(2) **Persons entitled to access in absence of probate or administration.** At any time after one hundred eighty (180) days from the death of a sole lessee or the last surviving co-lessee of a safe-deposit box, a financial institution shall grant access in the following order of priority to a safe-deposit box that was leased by the lessee at the time of the lessee's death:

(a) The personal representative named in the lessee's will if an estate has not been opened.

(b) A successor of the deceased safe-deposit box lessee, without necessity of administration, if an estate has not been opened.

(3) **Documentation required.** A person seeking access to the safe-deposit box must provide the financial institution with the following:

(a) Reasonable proof of the lessee's death;

(b) Reasonable proof of the identity of the person seeking access; and

(c) An affidavit meeting the requirements of subsection (5) of this section.

(4) **Inventory.** After presenting the financial institution with the items required by subsection (3) of this section, and within a reasonable time that allows the financial institution to comply, a person entitled to access to a safe-deposit box under subsection (2) of this section may exercise the following rights:

(a) The right to open the safe-deposit box in the presence of an employee of the financial institution along with one (1) other person who is either an officer of the financial institution or an attorney with an active bar license, after which an inventory of the contents of the safe-deposit box must be prepared by the person granted access and signed by:

(i) The person granted access to the safe-deposit box;

(ii) The employee; and

(iii) The third person who witnessed the inventory of the contents.

A copy of the inventory may be retained by the financial institution as a business record.

(b) The right to remove the contents of the safe-deposit box, subject to the requirements and limitations of this section.

(c) The right to cancel the lease for the safe-deposit box after all contents of the safe-deposit box have been removed.

(5) **Affidavit.** An affidavit required by subsection (3)(c) of this section must contain the following information:

(a) The name of the person leasing the safe-deposit box and the date of the lessee's death;

(b) The county in which the lessee was domiciled at the time of the lessee's death;

(c) A statement that no application or petition for the appointment of a personal representative has been granted or is pending in any jurisdiction;

(d) A statement that the value of the entire estate of the decedent, wherever located, excluding all liens and encumbrances thereon, does not exceed Fifty Thousand Dollars (\$50,000.00); and

(e) A statement under penalty of perjury that the affiant is qualified under subsection (2)(a) or (2)(b) of this section to obtain access to the safe-deposit box leased by the individual and the facts establishing the qualification.

(6) **Responsibility of a person granted access.** A person to whom access to a safe-deposit box is provided under this section is answerable and accountable to the administrator or executor of the estate of the decedent if one is subsequently opened. However, a financial institution that provides access to a safe-deposit box under this section is discharged and released from liability and responsibility for the contents held in the safe-deposit box to the same extent as if the financial institution had dealt with the personal representative or executor of the decedent. The financial institution is not required to:

(a) Inquire into the truth of any statement in an affidavit presented under this section; or

(b) Participate in the disposition of the assets held in the safe-deposit box or ensure that such assets are properly handled or disposed of.

(7) **Prepayment of fees or cost.** If a person granted access under this section does not have a key to the safe-deposit box and a financial institution requires the services of a locksmith or other contractor to gain access to a safe-deposit box, the financial institution may charge the person granted access a lost-key, drilling or similar fee, or require the person granted access to pay any cost associated with the services of a locksmith or other contractor necessary to gain access to the safe-deposit box. The financial institution shall have a reasonable amount of time to have the safe-deposit box drilled after payment of the required fee to allow the person granted access to access the safe-deposit box.

(8) **Interim access.** (a) A person described in subsection (2) of this section shall be given access to a safe-deposit box before expiration of the required one-hundred-eighty-day period only to remove any will or burial instructions contained therein. The person must first meet all the requirements and conditions of subsection (4)(a) of this section concerning the persons required to be present and a full inventory of the contents of the safe-deposit box; but no other contents of the safe-deposit box

may be removed until the one-hundred-eighty-day requirement of subsection (2) has been satisfied. The person given interim access to the safe-deposit box must immediately deliver all wills found and removed from the safe-deposit box to the clerk of the chancery court of the county in which the decedent was domiciled at the time of the decedent's death; failure to do so shall subject the person to criminal liability under Section 97-9-77.

(b) The financial institution may make a complete copy of any document removed and delivered under the terms of this subsection (8) and place that copy, together with a copy of the inventory and supporting documentation noted with the date of delivery, in the safe-deposit box to remain there pending removal of the contents of the box as provided by this section or other law.

(9) **Reliance on affidavit.** (a) A financial institution that acts in reliance upon an affidavit described in subsection (5) of this section without knowledge that the representations contained therein are incorrect is not liable to any person for so acting. A financial institution that does not have actual knowledge that the facts contained in the affidavit described in subsection (5) of this section are incorrect may assume without inquiry the existence of the facts contained in the affidavit.

(b) A financial institution shall not be held liable for any costs, expenses, damages or attorney's fees arising from a grant of access to, or delivery of, the contents held in a

safe-deposit box when the access or delivery is under the provisions of this section.

(10) **Affidavit form.** A document substantially in the following form may be used as the affidavit prescribed in subsection (3)(c) and subsection (5) of this section.

SAFE-DEPOSIT BOX AFFIDAVIT

The undersigned, after having been first duly sworn, hereby state(s) that:

1. The undersigned makes this affidavit under penalty of perjury pursuant to Section 81-5-64, Mississippi Code of 1972;
2. \_\_\_\_\_ ("decedent") died on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and was domiciled in \_\_\_\_\_ County;
3. At least one hundred eighty (180) days have elapsed since the death of the decedent;
4. The value of the entire estate of the decedent, wherever located, excluding all liens and encumbrances thereon, does not exceed Fifty Thousand Dollars (\$50,000.00);
5. No application or petition for the appointment of a personal representative of the estate has been granted or is pending in any jurisdiction;
6. At his/her death, decedent was the last surviving lessee/sole lessee of safe-deposit box number \_\_\_\_\_ located at \_\_\_\_\_.
7. The undersigned is qualified to obtain access to the safe-deposit box leased by the decedent as the successor as



defined in Section 81-5-64, Mississippi Code of 1972: (Choose one)

- a. The decedent's spouse;
- b. Or if there is no surviving spouse of the decedent, then any adult child of the decedent;
- c. Or if there is no surviving spouse or adult child of the decedent, then either parent of the decedent; or
- d. If there is no surviving spouse, adult child or parent of the decedent, then any adult sibling of the decedent.

The undersigned hereby ask(s) the financial institution to allow access to the safe-deposit box of the decedent to allow for the cancellation of the rental contract and relinquishment of the contents contained therein.

SIGNATURE AND ACKNOWLEDGMENT

\_\_\_\_\_

Date:

\_\_\_\_\_

Printed Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

Telephone Number:

\_\_\_\_\_

This document was acknowledged before me on

\_\_\_\_\_ (Date) by \_\_\_\_\_

(Name of Affiant).

Signature of Notary

\_\_\_\_\_ (Seal, if any.)

My commission expires: \_\_\_\_\_

**SECTION 2.** This act shall take effect and be in force from  
and after July 1, 2018.

PASSED BY THE SENATE

February 8, 2018



PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES

March 6, 2018



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

3-27-18

1:58pm